IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 19TH OCTOBER 2007 / 27TH ASWINA 1929

MFA.No. 870 of 1994()

OPMV.311/1990 of MOTOR ACCIDENT CLAIMS TRIBUNAL, THODUPUZHA
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APPELLANT - PETITIONER:

JAMES T.M. MANICKAVILA HOUSE,
HAILYBURIA P.O., ELAPPARA (VIA).

BY ADV. SRI.T.I.ABDUL SALAM
SRI.T.I.ABDUL SALAM

RESPONDENTS - RESPONDENTS:
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1. **JOSEPH @ SAMKUTTY, RAMANATTU HOUSE,**
KARIMTHARUVI, CHAPPATHU P.O.,

2. **THE NEW INDIA ASSURANCE CO. LTD.,**
MAIN ROAD, METTUPALAYAM.

3. **C.U. MATHEW, CHITTAPPANATTU HOUSE,**
MUNDAKAYAM.

BY ADV. SRI.LAL GEORGE
SRI.JOSY ANTONY

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 19/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. PADMANABHAN NAIR, J.

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M.F.A. 870 OF 1994

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Dated this the 19th day of October, 2007

J U D G M E N T

Heard. Admitted. Advocate Shri Lal George took notice for the third respondent. Notice to R1 and R2, the owner and driver of the vehicle, dispensed with. Appeal itself is heard and disposed of.

2. Appellant is the petitioner in O.P(MV) No.311 of 1990 on the file of the Motor Accidents Claims Tribunal, Thodupuzha. Alleging that he met with a motor vehicle accident on 20.8.1989 he filed the O.P. with a petition to condone delay of 179 days. Tribunal found that the accident occurred due to the negligence of the driver of the vehicle. Tribunal also found that the petitioner was entitled to get a compensation of Rs.13,245/-. It was also held that the Insurer is liable to indemnify the insured. But the Tribunal found that the appellant failed to offer satisfactory explanation for the delay of 179 days in filing the O.P. and dismissed the petition.

3. This appeal was filed on 11.7.1994 and became ripe

and come up for admission only today. After hearing both sides, I am of the view that the Tribunal should have condoned the delay and disposed of the O.P. on merits. Dismissal of the O.P. on the sole ground of delay is unsustainable.

4. Shri Lal George, learned counsel appearing for the second respondent submitted that even though the appeal was filed in the year 1994, it is coming up for orders after 13 years and the Insurer may not be saddled with the liability of paying interest for these 13 years. Submission made by the counsel for the Insurer is reasonable. Tribunal awarded Rs.13,245/- as compensation under various heads. Tribunal has awarded only Rs.2,500/- for fracture on the neck of scapula. After considering the claim made by the petitioner on each count, I am of the view that the Tribunal ought to have awarded a consolidated amount of Rs.15,000/- as compensation. So the petitioner is entitled to a total compensation of Rs.15,000/- with 9% interest. But the Insurer need pay interest at 9% only from the date of petition till date of dismissal of the petition, i.e., 13.4.1993 and from this date

till the date of realisation.

In the result, the appeal is allowed in part. An award is passed in favour of the petitioner to recover a sum of Rs.15,000/- as compensation with 9% interest from the date of petition till 13.4.1993 and from today till date of deposit. Insurer is directed to deposit the compensation awarded. On deposit, the petitioner can withdraw the entire amount.

K. PADMANABHAN NAIR, JUDGE.

vsv

K. PADMANABHAN NAIR, J.

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M.F.A. NO. 870 OF 1994

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J U D G M E N T

19TH OCTOBER, 2007